IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1268 of 2004

Yashwant Narayan Wadkar ... Appellant

V/s

Sitaram Rongya Keer

(since deceased through LRs) ..Respondent

Shri K.S.Dewal for Appellant

Mr.S.B.Shetye for Respondent

CORAM:S.R.SATHE,J.

DATED;16th March 2006

P.C.:-

. Heard both the learned Advocates.

. Appellant-original defendant in Regular Civil Suit NO.162 of 1994 has preferred this appeal against the judgment and order passed by the Court of the Joint District Judge, Ratnagiri whereby the decree for permanent injunction passed in favour of the plaintiff was confirmed and the the appeal was dismissed.

. The plaintiff filed a suit for permanent injunction restraining defendant from obstructing plaintiff's possession alleging that the defendant is not entitled to any right in the suit land. The said suit was opposed by the defendant. He contended that one

Karandikar was the owner of the suit land and plaintiff was occupant of the said land as per provisions of B.T.and A.L.Act. However he returned the land to the original owner on 15-1-1969 by accepting Rs.375/- and thereafter the original owner Karandikar sold the said land to the defendant for Rs.3,000/- on 9-2-1969 and since then he is in possession.

. After considering the evidence adduced by both the parties the trial Judge came to the conclusion that the right from year 1969 till the filing of the suit and even thereafter plaintiff was in actual possession. He, therefore decreed the suit and it was confirmed by the first appellate court.

. Shri Dewal, learned Advocate for the Appellant strenuously argued before me that in the instant case the owner Karandikar had sold the land to the defendant and put him in possession. However, sale deed could not be executed. He also submitted that though document executed on 15-1-1969 between plaintiff and original owner Karandikar was against the provisions of Section 43 of B.T. and A.L.Act. There is nothing to indicate that the said transaction got reversed and plaintiff received the possession. He, therefore, submitted that substantial question of law involved is whether both the Courts below wrongly interpreted the provisions of Section 43 of B.T.and A.L.Act and held that the transaction between plaintiff and Karandikar of return

of land was not legal.

. It must be noted that admittedly the land in question was initially owned by Karandikar and plaintiff was in occupation of the said land as a tenant under B.T. and A.L.Act. Though the defendant has contended that plaintiff had returned the land to the original owner Karandikar on 15-1-1969 there is in fact no convincing evidence in that behalf. If really that would have happened then there would not have been entries in Record of Rights recording the name of plaintiff in column of possession. Both the Courts below have given concurrent finding that since prior to 15-1-1969 till date of the suit plaintiff was in actual possession and revenue record also reflects the same position. The said finding is based on the evidence on record. There is no reason to interfere with the same. Merely because plaintiff had alternatively claimed possession we cannot jump to the conclusion that the plaintiff was not in possession of the suit land on the date of the suit. Plaintiff is certainly entitled to take alternate pleadings. The plaintiff had even produced some other Government record showing that even in the year 1994-95 he was in possession of the land and he received subsidy from Government under one scheme as he was in actual possession of the said land. Decree for perpetual injunction is rightly passed against the defendant. Fate of the appeal does not depend upon the application of Section 43 of B.T. and A.L.Act.

. So,it is very clear that no substantial question of law involved in this appeal. Hence the appeal is dismissed with limine.

(S.R.SATHE,J.)